

REMARKS

Claims 9 and 24 are currently being amended to recite that the polybutene-1 comprises a melt flow rate ranging from 100 to 1000 g/10 min. Basis for the amendments can be found throughout Applicant's specification, including page 4, lines 22-24.

Furthermore, new claims 29-31 are currently being added in which the polybutene-1 comprises either a melt flow rate ranging from 100 to 1000 g/10 min. or 100 to 400 g/10 min. Basis for new claims 29-31 can be found throughout Applicant's specification, including page 4, lines 22-24. Additionally, new claims 32 and 33 are currently being added in which the additives are selected from at least one pigment, colorant, or mixture thereof. Basis for new claims 32 and 33 can be found throughout Applicant's specification, including page 2, line 27 - page 3, line 11, as well as page 6, lines 11-12. As for new claims 34 and 35, these claims are currently being added in which the concentrate consists essentially of the components recited in the claims, respectively. Basis for new claims 34 and 35 can be found throughout Applicant's specification, including page 2, lines 12-14; page 3, lines 7-11; and page 7, line 25 - page 8, line 2.

Thus, the amendments to the claims presented herein do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, the Examiner is respectfully requested to enter these amendments.

1. Rejection of Claims 9-28 Under 35 U.S.C. §102(b) to U.S.

Patent 4,078,020

Applicant respectfully traverses the rejection of claims 9-28 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,078,020 (herein referred to as, "Rose, et al.").

As long-settled, for a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

With respect to the instant rejection, Applicant respectfully traverses the Examiner's contention that Rose, et al. teaches or discloses, or even suggests Applicant's currently claimed concentrates. In fact, beginning with claim 10, as well as all claims dependent upon claim 10, Applicant is currently claiming a concentrate comprising: (A) from 40% to 95% by weight of a composition relative to the total weight of (A); and (B) from 5% to 60% by weight of one or more additives, wherein composition A) comprises (1) from 10% to 35% by weight of polybutene-1; and (2)

from 90% to 65% by weight of polypropylene. Alternatively, Rose, et al. discloses in col. 1, lines 37-48, and col. 2, lines 5-16,

This invention is directed to a thermoplastic composition which comprises a blend of olefin polymers and isotactic crystalline polybutene-1. More specifically, the thermoplastic composition comprises

a. 20 to 80% by weight of an uncured ethylene-higher α -olefin copolymer which optionally may also contain a diene,

b. 20 to 60% by weight of crystalline isotactic polypropylene, and

c. 5 to 40% by weight of crystalline isotactic butene-1 homopolymer.

The thermoplastic composition of this invention preferably comprises

a. 30 to 50% by weight of an uncured ethylene-higher α -olefin copolymer which consists essentially of 60-85% ethylene and 15-40% of propylene, and preferably of 65-82% ethylene and 18-35% propylene, and having Mooney viscosity of 250° F from 40-80;

b. 25-50% by weight of crystalline isotactic polypropylene, having

c. 10-30% by weight of crystalline isotactic butene-1 homopolymer. (Emphasis added)

Additionally, the Examiner is directed to all of the Examples and the claims of Rose, et al. In fact, none of the Examples of Rose, et al. have a polypropylene content above 60% by weight, and none of the claims are directed to compositions having a polypropylene content above 60% by weight. Accordingly, Rose, et al. clearly discloses compositions having a much lower content of polypropylene

than currently claimed by Applicant (i.e., 20% to 60%, preferably 25% to 50% by weight, whereas Applicant is currently claiming 90% to 65% by weight of polypropylene). Therefore, clearly Rose, et al. does not anticipate Applicant's currently claimed concentrations outlined in claim 10, and claims dependent upon claim 10.

Moreover, Applicant respectfully believes one of ordinary skill in the art would not have modified Rose, et al. to arrive at Applicant's currently claimed concentrations outlined in claim 10, and claims dependent thereon, since doing so would clearly reduce the critical uncured ethylene component (a) below acceptable values. In fact, Applicant respectfully believes the uncured ethylene component (a) of Rose, et al. is generally disclosed as the predominate component of the compositions. Therefore, Applicant respectfully believes Rose, et al. clearly teaches away from such a modification, and may render the compositions of Rose, et al. unsatisfactory for their intended purpose and may change the principle operation of Rose, et al. See MPEP §2141.02 (VI) and §2143.01 (V), (VI).

For the same reasons outlined above, Applicant respectfully believes new claims 34 and 35 are not only not anticipated by Rose, et al., but are also patentably distinguishable from Rose, et al. Therefore, for the reasons outlined above, Applicant respectfully believes claims 10-18, 24-28, 30, 31, and 33-35 are believed to be patentably distinguishable from Rose, et al., and as such, respectfully believes the instant rejection should be withdrawn and the claims allowed to issue.

With respect to claims 9, 19-23, 29, and 32, Applicant responds to the instant rejection as follows. As noted above, Rose, et al. discloses in col. 1, lines 37-48, and col. 2, lines 5-16 that the compositions therein have 20-80%, preferably 30-50% by weight of an uncured ethylene component (a); 20-60%, preferably 25-50% by weight of a crystalline isotactic polypropylene component (b); and 5-40%, preferably 10-30% by weight of a crystalline isotactic butene-1 homopolymer. Additionally, Rose, et al. discloses in col. 2, lines 40-49,

Component (c) is crystalline isotactic butene-1 homopolymer which is commercially available and whose preparation is disclosed in U.S. Pat. Nos. 2,882,263, 3,362,940 and 3,112,300. Polybutene-1 can be replaced by a crystalline isotactic copolymer consisting essentially of at least 90% of butene-1 and up to 10% of an α -olefin having up to 12 carbon atoms, such as ethylene, propylene, pentene -1, and the other α -olefins listed above. Preferably component (c) is polybutene-1.

Accordingly, Rose, et al. discloses that the isotactic butene-1 component (c) is a garden-variety butene-1 homopolymer, which can be prepared by U.S. Patents 2,882,263; 3,362,940; and 3,112,300. This is collaborated by the Examples, in which a butene-1 polymer having a melt flow of 20 g/10 min. is used¹.

Alternatively, Applicant's specification states on page 4, lines 20-24,

It was found that the melt flow rate of polybutene-1 is a factor that can help to give good dispersion of the

¹ Rose, et al. discloses the use of a polymer described as "Polybutene-1 MF 20" in the Examples, which without any further description in Rose, et al., Applicant has interpreted to be a polybutene-1 homopolymer having a melt flow of 20 g/10 min.

additive and it is assumed that high values of the melt flow rate give better dispersion of the additive in the carrier. Preferably, a melt flow rate from about 100 to 1000 g/10 min, more preferably from 100 to 400 g/10 min, proved advantageous for polybutene-1 (measured at 190°C/2.16 kg according to ASTM D1238, condition E).

Therefore, Applicant unexpectedly found that not just any butene-1 polymer having any melt flow rate would be suitable; rather the melt flow rate of the polybutene-1 polymer was an important factor to give good dispersion of the additive in the concentrates. In fact, it was important that the polybutene-1 polymer have a very high melt flow rate (i.e., 100 to 1000 g/10 min.), as opposed to the garden-variety butene-1 polymer used in Rose, et al. having a melt flow rate of 20 g/10 min. As such, Applicant respectfully believes not only does Rose, et al. not disclose or teach Applicant's currently claimed concentrates outlined in claims 9, 19-23, 29, and 32, but Applicant also believes Rose, et al. fails to suggest the concentrates claimed in the aforementioned claims.

Moreover, Applicant respectfully believes there was no motivation or suggestion at the time of filing of Applicant's application, intrinsically or extrinsically in Rose, et al., absent Applicant's specification, to try and modify the compositions of Rose, et al. to arrive at Applicant's currently claimed concentrates as outlined in claims 9, 19-23, 29, and 32.

Therefore, for the reasons outlined above, Applicant respectfully believes claims 9, 19-23, 29, and 32 are believed to be patentably distinguishable from Rose, et al., and as such,

respectfully believes the instant rejection should be withdrawn and the claims allowed to issue.

CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw the rejection, and allow all pending claims 9-35. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner if he has any questions or comments.

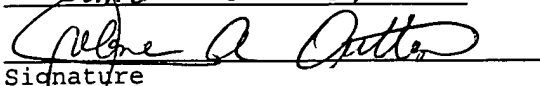
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